

1 DRAFT PREPARED BY LEGISLATIVE COUNCIL
2 For: Rep. Clemmons
3 Attorney: Harwell-Beach
4 Stenographer: Sanders
5 Date: August 31, 2009
6 DOC. I.D.: L:\COUNCIL\BILLS\MS\7420AHB10.DOCX
7
8

9 **A BILL**

10
11 AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976,
12 BY ADDING SECTION 16-3-29 SO AS TO CREATE THE
13 OFFENSE OF ATTEMPTED MURDER; TO AMEND SECTION
14 16-1-60, AS AMENDED, RELATING TO VIOLENT
15 OFFENSES, SO AS TO INCLUDE ATTEMPTED MURDER
16 AND ASSAULT AND BATTERY OF A HIGH AND
17 AGGRAVATED NATURE OFFENSES; BY ADDING
18 SECTION 16-3-621 SO AS TO DEFINE NECESSARY TERMS
19 AND CREATE GRADUATED ASSAULT AND BATTERY
20 OFFENSES; TO AMEND SECTION 17-25-45, AS AMENDED,
21 RELATING TO LIFE SENTENCES FOR CERTAIN REPEAT
22 OFFENSES, SO AS TO ADD ATTEMPTED MURDER AND
23 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED
24 NATURE TO THE OFFENSES CONSIDERED "MOST
25 SERIOUS"; AND TO REPEAL COMMON LAW ASSAULT
26 AND BATTERY OFFENSES.
27

28 Be it enacted by the General Assembly of the State of South
29 Carolina:
30

31 SECTION 1. Article 1, Chapter 3, Title 16 of the 1976 Code is
32 amended by adding:
33

34 "Section 16-3-29. A person who attempts to kill another person
35 with malice aforethought, either express or implied, commits the
36 offense of attempted murder. A person who violates the provisions
37 of this section is guilty of a felony and must be imprisoned for a
38 mandatory minimum of not less than twenty years, no part of
39 which may be suspended or probation granted, or may be
40 sentenced up to life imprisonment."
41

1 SECTION 2. Section 16-1-60 of the 1976 Code, as last amended
2 by Act 379 of 2006, is further amended to read:

3
4 “Section 16-1-60. (A) For purposes of definition under South
5 Carolina law, a violent crime includes the offenses of:

6 (1) murder (Section 16-3-10);

7 (2) attempted murder (16-3-29);

8 (3) criminal sexual conduct in the first and second degree
9 (Sections 16-3-652 and 16-3-653);

10 (4) criminal sexual conduct with minors, first and second
11 degree (Section 16-3-655);

12 (5) assault with intent to commit criminal sexual conduct,
13 first and second degree (Section 16-3-656);

14 (6) assault and battery with intent to kill (Section 16-3-620);

15 (7) assault and batter of a high and aggravated nature
16 (Section 16-3-621(B)(1));

17 (8) kidnapping (Section 16-3-910);

18 (9) voluntary manslaughter (Section 16-3-50);

19 (10) armed robbery (Section 16-11-330(A));

20 (11) attempted armed robbery (Section 16-11-330(B));

21 (12) carjacking (Section 16-3-1075);

22 (13) drug trafficking as defined in Section 44-53-370(e) or
23 trafficking cocaine base as defined in Section 44-53-375(C);

24 (14) manufacturing or trafficking methamphetamine as
25 defined in Section 44-53-375;

26 (15) arson in the first degree (Section 16-11-110(A));

27 (16) arson in the second degree (Section 16-11-110(B));

28 (17) burglary in the first degree (Section 16-11-311);

29 (18) burglary in the second degree (Section 16-11-312(B));

30 (19) engaging a child for a sexual performance (Section
31 16-3-810);

32 (20) homicide by child abuse (Section 16-3-85(A)(1));

33 (21) aiding and abetting homicide by child abuse (Section
34 16-3-85(A)(2));

35 (22) inflicting great bodily injury upon a child (Section
36 16-3-95(A));

37 (23) allowing great bodily injury to be inflicted upon a child
38 (Section 16-3-95(B));

39 (24) criminal domestic violence of a high and aggravated
40 nature (Section 16-25-65);

41 (25) abuse or neglect of a vulnerable adult resulting in death
42 (Section 43-35-85(F));

1 (26) abuse or neglect of a vulnerable adult resulting in great
2 bodily injury (Section 43-35-85(E));
3 ~~accessory before the fact to commit any of the above offenses~~
4 ~~(Section 16-1-40); attempt to commit any of the above offenses~~
5 ~~(Section 16-1-80); and~~

6 (27) taking of a hostage by an inmate (Section 24-13-450).

7 (B) For purposes of definition under South Carolina law, a
8 violent crime includes accessory before the fact to commit any of
9 the offenses delineated in subsection (A) pursuant to Section
10 16-1-40 and attempt to commit any of the offenses specifically
11 enumerated in subsection (A) pursuant to Section 16-1-80.

12 (C) Only those offenses specifically enumerated in this section
13 are considered violent offenses.”

14
15 SECTION 3. Article 7, Chapter 3, Title 16 of the 1976 Code is
16 amended by adding:

17
18 “Section 16-3-621.(A) For purposes of this section:

19 (1) ‘Great bodily injury’ means bodily injury which causes a
20 substantial risk of death or which causes serious, permanent
21 disfigurement or protracted loss or impairment of the function of a
22 bodily member or organ.

23 (2) ‘Moderate bodily injury’ means bodily injury which
24 requires medical treatment but does not cause a substantial risk of
25 death or which does not cause serious, permanent disfigurement or
26 protracted loss or impairment of the function of a bodily member
27 or organ.

28 (3) ‘Private parts’ means the genital area or buttocks of a
29 male or female or the breasts of a female.

30 (B)(1) A person commits the offense of assault and battery of
31 high and aggravated nature if he unlawfully injures another person,
32 or if he offers or attempts to injure another person with the present
33 ability to do so, and when:

34 (a) great bodily injury to another person results or great
35 bodily injury to another person could have resulted;

36 (b) the act involves nonconsensual touching of the private
37 parts of an adult, either under or above clothing, with lewd and
38 lascivious intent;

39 (c) the act is accomplished by means likely to produce
40 death or great bodily injury; or

41 (d) the act occurred during the commission of a robbery,
42 burglary, kidnapping, or theft.

1 (2) A person who violates the provisions of subsection (1) is
2 guilty of a felony and, upon conviction, must be imprisoned for not
3 more than twenty years.

4 (C)(1) A person commits the offense of assault and battery in
5 the first degree if he unlawfully injures another person, or offers or
6 attempts to injure another person with the present ability to do so,
7 and when:

8 (a) moderate bodily injury to another person results or
9 moderate bodily injury to another person could have resulted;

10 (b) the act involves nonconsensual touching of the private
11 parts of an adult, either under or above clothing; or

12 (c) there is a great disparity of the size or physical
13 condition between the actor and the victim.

14 (2) A person convicted pursuant to subsection (1) is guilty of
15 a misdemeanor and, upon conviction, must be fined not more than
16 two thousand five hundred dollars or imprisoned for not more than
17 three years, or both.

18 (D)(1) A person commits the offense of assault and battery in
19 the second degree if he unlawfully injures another person, or who
20 offers or attempts to injure another person with the present ability
21 to do so.

22 (2) A person convicted pursuant to subsection (1) is guilty of
23 a misdemeanor and, upon conviction, must be fined not more than
24 five hundred dollars or imprisoned for not more than thirty days, or
25 both.”

26
27 SECTION 4. Section 17-25-45(C)(1) of the 1976 Code, as last
28 amended by Act 176 of 2002, is further amended to read:

29
30 “(1) ‘Most serious offense’ means:

31 16-1-40 Accessory, for any offense enumerated in this
32 item

33 16-1-80 Attempt, for any offense enumerated in this item

34 16-3-10 Murder

35 16-3-29 Attempted Murder

36 16-3-30 Killing by poison

37 16-3-40 Killing by stabbing or thrusting

38 16-3-50 Voluntary manslaughter

39 16-3-85(A)(1) Homicide by child abuse

40 16-3-85(A)(2) Aiding and abetting homicide by child
41 abuse

42 16-3-210 Lynching, First degree

43 16-3-430 Killing in a duel

1 16-3-620 Assault and battery with intent to kill
 2 16-3-621(B)(1) Assault and battery of a high and
 3 aggravated nature
 4 16-3-652 Criminal sexual conduct, First degree
 5 16-3-653 Criminal sexual conduct, Second degree
 6 16-3-655 Criminal sexual conduct with minors, except
 7 where evidence is presented at the criminal proceeding and the
 8 court, after the conviction, makes a specific finding on the record
 9 that the conviction obtained for this offense resulted from
 10 consensual sexual conduct where the victim was younger than the
 11 actor, as contained in Section 16-3-655(3)
 12 16-3-656 Assault with intent to commit criminal sexual
 13 conduct, First and Second degree
 14 16-3-910 Kidnapping
 15 16-3-920 Conspiracy to commit kidnapping
 16 16-3-1075 Carjacking
 17 16-11-110(A) Arson, First degree
 18 16-11-311 Burglary, First degree
 19 16-11-330(A) Armed robbery
 20 16-11-330(B) Attempted armed robbery
 21 16-11-540 Damaging or destroying building, vehicle, or
 22 other property by means of explosive incendiary, death results
 23 24-13-450 Taking of a hostage by an inmate
 24 25-7-30 Giving information respecting national or state
 25 defense to foreign contacts during war
 26 25-7-40 Gathering information for an enemy
 27 43-35-85(F) Abuse or neglect of a vulnerable adult
 28 resulting in death
 29 55-1-30(3) Unlawful removing or damaging of airport
 30 facility or equipment when death results
 31 56-5-1030(B)(3) Interference with traffic-control devices
 32 or railroad signs or signals prohibited when death results from
 33 violation
 34 58-17-4090 Obstruction of railroad, death results.”
 35
 36 SECTION 5. The common law offenses of assault and battery
 37 with intent to kill, assault and battery of a high and aggravated
 38 nature, aggravated assault and battery, simple assault and battery,
 39 assault and battery, assault of a high and aggravated nature,
 40 aggravated assault, simple assault, and assault are abolished for
 41 offenses occurring after the effective date of this act.
 42

1 SECTION 6. Wherever in the 1976 Code reference is made to the
2 common law offense of assault and battery of a high and
3 aggravated nature, it means assault and battery of a high and
4 aggravated nature as contained in Section 16-3-620; and wherever
5 reference is made to assault and battery with intent to kill, it means
6 attempted murder as defined in Section 16-3-29.

7
8 SECTION 7. The repeal or amendment by this act of any law,
9 whether temporary or permanent or civil or criminal, does not
10 affect pending actions, rights, duties, or liabilities founded thereon,
11 or alter, discharge, release or extinguish any penalty, forfeiture, or
12 liability incurred under the repealed or amended law, unless the
13 repealed or amended provision shall so expressly provide. After
14 the effective date of this act, all laws repealed or amended by this
15 act must be taken and treated as remaining in full force and effect
16 for the purpose of sustaining any pending or vested right, civil
17 action, special proceeding, criminal prosecution, or appeal existing
18 as of the effective date of this act, and for the enforcement of
19 rights, duties, penalties, forfeitures, and liabilities as they stood
20 under the repealed or amended laws.

21
22 SECTION 8. This act takes effect upon approval by the Governor.
23 ----XX----